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BY H. M. R. POPE.

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THE

BILLS OF SALE ACT, 1878,

With Notes,

AND AN INTRODUCTION CONTAINING A CONCISE STATEMENT OF THE GENERAL LAW OF BILLS OF SALE.

BY

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TABLE OF CASES.

INTRODUCTION.

Bills of Sale and other Transfers of Chattels.

The bill of sale, comprising in it widest sense every written instrument by which a transfer of chattels *inter vivos* is effected or evidenced, has long been a familiar subject of law; for though chattels can for the most part be transferred without any writing at all, yet public policy and private convenience have commonly required or recommended a written memorial of the transaction for the prevention of uncertainty and fraud. The same object has led to the gradual addition of many other conditions essential in various cases to the validity of a transfer of chattels, until, indeed, it is questionable whether public policy and private convenience are not in fact prejudiced by the complicated machinery designed to insure them. However this may be, the prevention of uncertainty and fraud is the great determinant of the law relating to the transfer of chattels, as, indeed, of most other laws also. Witness the importance attached to the fact of possession. A change of property accompanied by a change of possession leaves no room for uncertainty and little for fraud. Hence, with some few exceptions, the assignment of a chattel by a person having power

Delivery of possession

to dispose of it, effected and evidenced by actual delivery of possession, vests the property in the transferee without any further formality, whether the assignment be voluntary or for value, upon trust or absolute. On the other hand, a voluntary gift of a chattel, if unaccompanied by delivery of possession, is void even against the assignor himself unless made by deed. So, again, actual change of possession will take a transfer out of the Bills of Sale Act, and, for the most part, out of the Statute of Frauds too.

mited use "bill sale."

It is for the same reason that the cases in which the validity of transfers of chattels has been questioned, have not usually been cases of absolute transfer, in which from the nature of the transaction the possession of the chattel usually follows the property in it; but of conditional transfer or mortgage, in which the object has been to reconcile the transfer of property to a mortgagee with the retention of possession by the mortgagor. While as it is in this last class of cases, too, that the use of a written memorial of the transaction is most expedient and frequent, the very term "bill of sale" is not uncommonly used in the limited sense of a mortgage of chattels. In the following pages, however, the term may be construed in the more general sense already indicated, except when the context evidently points to the limited signification.

Chattels."

On the other hand, the term "chattels," which is capable of being extended to comprise leaseholds or chattels real, choses in action, and chattels such as growing crops and fixtures when attached to and of the nature of realty, is, except when other-

wise indicated, used in the narrower sense, which excludes these several classes. It is important, especially with regard to growing crops and fixtures, to observe this distinction, because while the line which separates their real from their chattel qualities is very finely drawn, the rules applicable to them, according as they are regarded as real or personal estate, are in many respects widely different. *Vide post*, pp. 7—12. Generally speaking, it may be said that growing crops and fixtures are of the nature of realty when dealt with in connection with the land or buildings in or upon which they are, while, when dealt with independently of or as severed from such land or buildings, they are simple chattels, and as such subject to the propositions hereafter stated.

Growing crops and fixtures.

Another class of chattels to which these propositions are not necessarily applicable, is that of ships and interests in ships. A bill of sale is, indeed, the universally recognized form of transfer of such interests; but the legal incidents to which they are subject are so peculiar as to place them outside the purpose of a concise statement such as this is intended to be.

Ships.

The Validity of Transfers of Chattels.

The validity of a transfer of chattels may be affected by considerations having for their object, either (1) the quality of the act itself; or (2) the position of the assignor, in relation to particular classes of persons. In the former case the transfer is good or bad as against all the world alike; in the latter, as against the particular persons or classes of persons.

Where transfers are absolutely void.

The propositions of law bearing on the quality of the act itself may be very shortly formulated; thus:—

1. A voluntary gift of chattels is void as against all the world, unless (a) accompanied by actual transfer of possession; or (b) effected by an instrument under seal; or (c) attended by a declaration of trust by the transferor in favour of the transferee.

2. A contract for the sale, whether absolute or conditional, of chattels of the value of 10*l.* or upwards, is void against all the world, unless (a) the buyer accept part of the chattels sold and actually receive the same; or (b) give something in earnest to bind the bargain or in part-payment; or (c) some note or memorandum in writing of the bargain, specifying the names of both parties and the price, be made and signed by the party to be charged by the contract, or his agent thereunto lawfully authorized. (See the Statute of Frauds as amended by Lord Tenterden's Act.)

Where transfers are void *in personam.*

The law bearing on the relations of the assignor of chattels to particular classes of persons, and the effect of such relations on the validity of the transfer, is of a more complicated character.

These particular classes of persons are—(a) the general creditors of the assignor and their representatives, the trustee in his bankruptcy or liquidation; (b) the execution creditor of the assignor and the sheriff or other officer executing the process on behalf of such creditor; (c) the landlord of the assignor and other persons having the right of distress over his premises; and (d)

purchasers from the assignor for valuable consideration.

For the protection of these various classes of persons, provision has from time to time been made by statutes directed sometimes to two or more classes, sometimes to one class exclusively of the others; the chief of these being the stat. 13 Eliz. c. 5, the Bankruptcy Acts, and the Bills of Sale Acts.

The Statute 13 Eliz. c. 5.

The first of these, which is also the widest in its application, furnishes the following rule:—

Fraudulent transfers.

All transfers of goods, by writing or otherwise, contrived to the end, purport and intent to defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs are void against any person who is, shall or might be disturbed, delayed or defrauded thereby; unless the alienation be for a good and *bonâ fide* consideration to a purchaser having no notice of the fraud.

The intent to defeat, hinder or delay creditors may be either actually proved or inferred from the fact that such was the necessary effect of the instrument.

Debt or liability at the date of transfer.

In order, however, that there may be such an intent, there must be creditors. In other words, there must be indebtedness or the contemplation of indebtedness at the time of the transfer to make the act applicable. At one time, it was even said there must be insolvency; then, on the other hand, that any indebtedness would

suffice. The intermediate position is the true one. The indebtedness, if that alone is relied on, must be such as, having regard to the amount of property left after deduction of that transferred, points to an intention, actual or constructive, to defeat, hinder or delay creditors. But not less indicative of fraud than a disposition by one actually indebted, is a disposition of a substantial portion of his property by one who contemplates liability, or is about entering on business which may import liability. This, therefore, though no indebtedness be proved at the time, *à fortiori*, though every debt then owing may have since been paid, will introduce the operation of the Act.

Cases within the Act.

Proved fraud, even at common law and independently of the statute, is sufficient to invalidate a transaction as against persons privy to the fraud. Purchasers for valuable consideration without notice are, by the terms of the Act, excluded from its effects. Between these two classes of cases there lie a large number in which, though fraud be not actually proved, yet it may be inferred from the circumstances. At one time an attempt was made to establish conclusive *indicia* of this constructive fraud; and though this attempt failed, there are, no doubt, certain facts which we are warranted by the authorities in regarding as evidence of more than ordinary value.

Voluntary settlements.

Voluntary settlements are, if not *primâ facie* fraudulent, yet open to suspicion; while, if they are accompanied with proved indebtedness, or are quickly followed by proved insolvency, or extend in terms or in fact to the whole, or substantially the whole, of the settlor's property, the burden of

proving his solvency at the time is thrown upon the parties maintaining their validity.

Possession retained.

Retention of possession by the transferor on an absolute assignment, or a colourable delivery of possession to the transferee, is strong *primâ facie* evidence of fraud. On the other hand, where the possession is consistent with the deed—particularly, for example, in the case of mortgages, when the transfer is conditional only—or where, from the nature of the case, possession cannot be given, and no credit accrues to the transferor from non-delivery, as, *e.g.*, on the sale of a ship at sea, or of goods in the possession of a third person,—the mere fact that there is no possession taken is no evidence of fraud.

Secrecy.

Secrecy is a badge of fraud; notoriety tends to rebut the presumption.

General assignment.

A transfer which extends to the whole or substantially the whole of the assignor's property is suspicious, though there is of course nothing to prevent a *bonâ fide* sale of the whole of a man's property.

Transfer in contemplation of liability.

So, though there is nothing in the Act to prevent a debtor paying or securing one creditor in preference to another, even though the intent to defeat the latter be apparent on the face of the transaction, yet the withdrawal of property pending proceedings on the part of the latter creditor, and *à fortiori* pending proceedings on the part of the debtor's general creditors, or in contemplation of impending liability of any other kind, is, though not conclusive of fraud, yet an element of importance among the circumstances from which it may be inferred.

Summary of suspicious circumstances.

Thus, want or inadequacy of consideration, generality of transfer, retention of possession, secrecy, impending liability, are suspicious facts. To these may be added circumstances apparently inconsistent with the transaction being of an ordinary *bonâ fide* character, such as the presence of a power of revocation or unusual powers of dealing with the property, a secret trust for the transferor, retention of the bill of sale by the transferor, and even an obtrusive assertion of *bona fides* either in the instrument of transfer itself or in the circumstances attending its execution.

Combined circumstances.

And while, on the one hand, circumstances which *primâ facie* render the transaction fraudulent may be explained by other evidence showing *bona fides*, so, on the other, circumstances not suspicious in themselves may become so in combination; *e. g.*, retention of possession, though consistent with the deed, may, if combined with grossly inadequate consideration or dealings with the property beyond the ordinary character of a mortgagor, be evidence of fraud within the Act.

What creditors within benefit of Act.

The benefit of the Act is not confined to persons who are creditors at the time of the transfer; but a subsequent creditor has clearly a more difficult case to establish when he seeks to prove the fraudulent intent. When once the transfer is declared void, subsequent creditors are entitled equally with prior creditors to come in under the decree; and it would even seem that where the plaintiff is a subsequent creditor he should, in form, sue on behalf of himself and all other the creditors of the transferors.

TRANSFERRED CHATTELS HOW FAR LIABLE TO DISTRESS.

2. The transfer of any distrainable chattels is void at common law against the landlord of the transferor, and any person having the right of distress on his land so long as the chattels remain on the land over which the distress is leviable,—for the lien on chattels incident to the distress is in respect of the place on which they are found, and not of the person to whom they belong,—*à fortiori* is the transfer void if it is in itself fictitious, and the goods remain on the premises. At common law.

But even if the chattels be not merely transferred, but actually removed from the premises, yet by the statute 8 Anne, c. 14, if the removal is fraudulent or clandestine to prevent the distress, a landlord or lessor may, within the thirty days next ensuing, take and seize the chattels wherever they are found. Sales *bonâ fide* and for a valuable consideration before seizure, made to any person or persons not privy to such fraud, are excepted from the Act. Under 8 Anne, c. 14.

On a purchase or mortgage of agricultural produce or stock, the statute 56 Geo. 3, c. 50, should be consulted. See also Millar & Collier on Bills of Sale, pp. 142 *et seq.* Agricultural produce.

TRANSFERS HOW AFFECTED BY BANKRUPTCY LAW.

3. Rateable distribution among creditors being the policy of all Bankruptcy Acts, whatever tends to prevent distribution or rateable distribution is within the mischief they are framed to prevent. Hence the doctrines of relation, reputed owner- Policy of bankruptcy law.

ship, and fraudulent preference. On the other hand, the policy of commerce demands no less the protection of *bonâ fide* transactions for value.

Doctrine of relation.

The doctrine of relation is this. By sects. 15 and 125 of the Bankruptcy Act, 1869, all property belonging to a bankrupt or liquidating debtor at the commencement of his bankruptcy or liquidation, is divisible among his creditors. But the commencement of the bankruptcy or liquidation is not, as might be supposed, the adjudication order or appointment of the trustee, but something prior to this, and in fact something for the most part prior to any proceedings at all. The commencement of a bankruptcy is the completion of the act of bankruptcy on which the adjudication order is made; or if the debtor has committed several acts of bankruptcy, then the completion of the first of such acts committed within twelve months before the adjudication order: provided that at the date of the act of bankruptcy the debtor was indebted in an aggregate amount sufficient to support a petition, and that the debt or debts remain unpaid at the date of adjudication. The commencement of a liquidation is, for this purpose, the presentation of the petition, or if there is an earlier act of bankruptcy fulfilling the conditions just stated with regard to the commencement of bankruptcy, then the completion of such act of bankruptcy.

The effect of these provisions is to avoid all dealings with the debtor's property after the completion of such an act of bankruptcy as just mentioned, including, if it consist in a dealing with the debtor's property, the act of bankruptcy

itself. *Bonâ fide* transactions for valuable consideration, without notice of the act of bankruptcy, are, however, expressly excepted and declared to be unaffected by the Act.

What transfers are acts of bankruptcy.

We have said that the act of bankruptcy itself, if a dealing with the debtor's property, is avoided on subsequent bankruptcy or liquidation. The acts of bankruptcy pertinent to this observation are—

(1) The conveyance or assignment by a debtor in England or elsewhere of all his property to a trustee or trustees for the benefit of his creditors generally; and (2) a fraudulent conveyance, gift, delivery or transfer by a debtor in England or elsewhere of his property, or any part thereof.

The first of these calls for no particular remark. On the second, observe—

(a.) That all transfers which are fraudulent within 13 Eliz. c. 5, are fraudulent within this clause;

(b.) That a transfer of the whole or substantially the whole of a debtor's property to secure an existing debt, or an existing debt and an inconsiderable advance, is so fraudulent. The test seems to be this—Is the advance such as to afford reasonable hope of the debtor tiding over his difficulties, and being able to meet his engagements?

Fraudulent preference.

A particular class of fraudulent dealing is that which is known by the title of fraudulent preference. By sect. 92, every conveyance or transfer of property or charge thereon . . . . made by any person unable to pay his debts as they become

due from his own moneys, in favour of any creditor, or any person in trust for any creditor, with a view of giving the creditor a preference over other creditors, is fraudulent and void against the trustee in bankruptcy or liquidation, if the debtor become bankrupt or liquidate within three months of making the same. The rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration are preserved. The effect of the section is not so much to add to the law—for a disposition of property designed to prefer one creditor at the expense of all the rest is perhaps fraudulent within the Act of Elizabeth—as to define particularly certain *indicia* of fraud. There is no need for a contemplation of bankruptcy or an intention to defeat the general creditors. On the other hand, there must be an intention to prefer the particular creditor. It is, however, important to observe that the act must be the spontaneous act of the debtor himself; and if the payment, transfer, or security is made on the solicitation of the creditor, he having no notice of any act of bankruptcy at the time, the transaction will be upheld.

Other transfers liable to impeachment.

In addition to dealings which are thus described as fraudulent and void, there are others which, under certain circumstances, are either actually void as against the trustee in bankruptcy, or impose upon the persons claiming under them the obligation to show the competence of the transferor to make the disposition.

Settlements by trader. Postnuptial.

By sect. 91 of the Act, any settlement of property made by a trader (not being a settlement made before and in consideration of marriage, or

made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife) will, if the settlor becomes bankrupt within two years after the date of the settlement, be in any case void as against the trustee.

A similar settlement will, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be equally void against the trustee, unless the parties claiming under the settlement can prove that the settlor was at the time of making it able to pay all his debts without the aid of the property therein comprised.

Ante-nuptial.

Moreover, any covenant or contract made by a trader in consideration of marriage, for the future settlement upon or for his wife or children, of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, will, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void as against his trustee.

Possession, order, or disposition of trader.

In addition to the provisions of the Bankruptcy Act affecting our subject, to which allusion has already been made, there is yet another applicable to the transfer of chattels where the transferor is a trader. For in the property divisible among the bankrupt's creditors this class is included—all goods and chattels being at the commence-

ment of the bankruptcy or liquidation in the possession, order, or disposition of the debtor being a trader by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner. And the policy of the provision is, that where the owner of chattels has allowed another person to gain credit by the possession, order, or disposition of those chattels, and the chattels are at the commencement of the bankruptcy still in the same possession, order, or disposition, the owner shall not be allowed to defeat the credit which his acquiescence has encouraged. Two questions therefore arise:—(1) Is the possession, order, or disposition such that the bankrupt may reasonably be inferred to be the owner? and (2) Does the true owner consent? (*a*)

Observe, moreover, that the question whether possession is or is not consistent with the deed, which was a test question under the statute of Elizabeth, does not arise here. The fact of possession is enough, and the possession may be by an agent or bailor. Adverse interruption of possession, on the other hand, even by a third person, excludes the doctrine, as also does constructive delivery of possession, *e. g.*, by transfer of the key of the warehouse in which chattels are deposited; and the custom of particular trades will exclude the inference of ownership even though possession be retained; *à fortiori* where the true owner is also the original owner, and the chattels are in the possession of the bankrupt for a particular purpose.

(*a*) Choses in action, chattels real, fixtures (even where dealt with apart from the premises), and presumably growing crops, are not within the doctrine.

It is, perhaps, needless to add that trust property is not within the doctrine. And after the 31st December, 1878, chattels, the transfer of which is registered under the Bills of Sale Act, 1878, will not be within the doctrine either. *Vide post*, p. 31.

Bills of Sale Acts.

3. The third class of statutes affecting the validity of bills of sale in particular cases is that of the Registration Acts. From the preamble of the original Act, that of 1854, it appears that frauds were frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons were enabled to keep up the appearance of being in good circumstances and possessing property, and the grantees or holders of such bills of sale had the power of taking possession of the property of such persons to the exclusion of the rest of their creditors. The Act accordingly provided for the registration of bills of sale, and made bills of sale which were not registered within twenty-one days of execution void against (a) assignees in bankruptcy or insolvency, and (b) execution creditors and the officers executing the process, so far as property continuing in the possession or apparent possession of the maker of the bill of sale was concerned. This Act was amended in some particulars in 1866.

Object of these Acts.

The Act of 1878, which forms the chief subject of this Pamphlet, repeals the previous Acts, and while directed to the same objects as these,—First, varies in some degree the method of obtaining their objects; Secondly, defines the law on certain

Principal changes introduced by the Act of 1878.

disputed points of interpretation; and, Thirdly, contains some additional and outlying provisions.

First.—Thus, 1. The period allowed for registration is reduced from twenty-one to seven days (s. 8).

2. The avoidance against all the world of certain duplicate bills of sale is new (s. 9).

3. The ratification of the register is intrusted to a judge of the High Court (s. 14).

4. The requirement that the attesting witness shall be a solicitor of the Supreme Court is new (s. 10).

5. The requirement that the original bill of sale and schedule shall be presented to the registrar at the time of registration is not in the old Acts, and the copy, and not the original, is in every case to be filed (s. 10).

6. The index is made alphabetical (s. 12).

7. Satisfaction may be directed to be entered by the registrar, instead of, as formerly, by the judge (s. 15).

8. A false affidavit is made perjury (s. 17).

Secondly.—9. The interpretations of the terms "bill of sale" and "personal chattels" are extended and determined (s. 4).

10. The application of the Act to fixtures (particularly trade fixtures) and to growing crops is defined (ss. 4, 5, 7). It should be observed that this provision is already in operation (s. 7).

11. The attornment and power of distress clauses in mortgages are brought within the Act (s. 6).

12. Transfers of bills of sale are expressly excepted from registration (ss. 10, 11).

13. Office copies of bills of sale or affidavits are expressly made evidence (s. 16).

Thirdly.—14. As between holders of bills of sale, priority of registration is made to give priority of interest (s. 10).

15. Registration is absolutely to exclude the doctrine of possession, order, or disposition under the bankruptcy law (s. 20).

For observations on these changes, the notes to the sections in which they occur are referred to.

STAMPS ON BILLS OF SALE.

A BILL of sale is treated by 33 & 34 Vict. c. 97, as being—

(a) Absolute, when the stamp follows the rule of conveyances on sales; or

(b) By way of security, when it follows the rule of mortgages.

(a) Thus an absolute bill of sale requires an ad valorem duty according to the following scale:—

	£	s.	d.
Where the consideration does not exceed 25*l.*, for every 5*l.* and also for every fractional part of 5*l.*	0	0	6
Where the consideration exceeds 25*l.* but does not exceed 300*l.*, for every 25*l.* and also for every fractional part of 25*l.*	0	2	6
Where the consideration exceeds 300*l.*, for every 50*l.* and also for every fractional part of 50*l.*	0	5	0

(b) A bill of sale by way of security requires an ad valorem stamp according to the following scale:—

	£	s.	d.
(i.) Where the bill of sale is the only or principal security—			
Where the consideration does not exceed 25*l.*	0	0	8
Where the consideration exceeds 25*l.* but does not exceed 300*l.*, for every 50*l.* and also for every fractional part of 50*l.*	0	1	3
Where the consideration exceeds 300*l.*, for every 100*l.* and also for every fractional part of 100*l.*	0	2	6
(ii.) Where the bill of sale is a secondary security, for every 100*l.* and also for every fraction of 100*l.*	0	0	6
(iii.) On a transfer or assignment, for every 100*l.* and also for every fraction of 100*l.* of the amount transferred	0	0	6
And if any further money is added, the same amount on such further money as on a principal security for such further money.			
(iv.) On a re-assignment, for every 100*l.* and also for every fraction of 100*l.* of the total amount at any time secured	0	0	6

THE

BILLS OF SALE ACT, 1878.

(41 & 42 VICT. c. 31.)

An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.

[22nd July, 1878.]

Short title.

1. THIS Act may be cited for all purposes as the "Bills of Sale Act, 1878."

See sect. 23, *infra*, for the repeal of the Bills of Sale Acts, 1854 and 1866.

Commencement.

2. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

But see the second paragraph of sect. 7.
The Bills of Sale Act, 1854, came into operation on the 10th July, 1854.

Application of Act.

3. This Act shall apply to every bill of sale executed on or after the first day of January, one thousand eight hundred and seventy-nine (whether the same be absolute or subject or not subject to any trust), whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

As to the effect of the Act on the construction of deeds or instruments including fixtures or growing crops, and

executed before the commencement of the Act, see sect. 7, *infra*. The words "or conditional" would seem to be accidentally omitted after the word "absolute." And see Bills of Sale Act, 1854, s. 1.

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4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "bill of sale" shall include bills of sale (*a*), assignments, transfers (*b*), declarations of trust without transfer, inventories of goods, with receipt thereto attached, or receipts for purchase-moneys of goods (*c*), and other assurances of personal chattels (*d*), and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt (*e*), and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred (*f*),

For the instruments excluded from the operation of the Act, vide *infra*, p. 4, where the section is continued.

(*a*) **Bill of sale,**—*i. e.*, an assignment of personal chattels by deed on a sale, or, more generally, any assignment of personal chattels, whether on a sale or not, including any note or memorandum of such an assignment.

(*b*) **Assignments, transfers.**—But an assignment or transfer of a bill of sale itself does not as such require registration (sect. 10, *infra*, p. 27), even though the bill of sale, as having been given before the commencement of the Bills of Sale Act, 1854, has never been registered. *Re Shaw*, 25 W. R. 686.

(*c*) **Inventories of goods with, receipt thereto attached, or receipts for purchase-moneys of goods.**—This is an extension of the meaning of "bill of sale," and does away with the test question formerly relied on, viz., whether pro-

perty in the goods actually passed by virtue of the instrument. See *Allsopp* v. *Day*, 7 H. & N. 457; *Byerley* v. *Prevost*, L. R., 6 C. P. 144; *Graham* v. *Wilcockson*, 46 L. J., N. S., Exch. 55. See also *Phillips* v. *Gibbons*, 5 W. R. 527, where the receipt was by a recital, and registration was required on the ground that the instrument was a colourable bill of sale.

(*d*) **Other assurances.**—This is not very elegant, following, as it does, immediately on instruments which are not assurances at all.

Transfers in which the writing is superfluous.

It may be convenient here to refer to the class of cases in which there having been no need for a writing, either under the Statute of Frauds, or for any other reason, a writing is nevertheless given. In such cases it has been argued that as the property passed independently of, and frequently prior to the giving of the writing, the non-registration of a writing, which was, in fact, superfluous, should not affect the validity of the transaction. This contention has not, however, met with favour in the past, and now that inventories and receipts are added to the list of documents requiring registration is still less likely to do so in the future. In *Brantom* v. *Griffits*, L. R., 1 C. P. D. 349, Brett, J., expressed himself thus:—"The contention is that there was a good verbal contract apart from the documents under which the property passed; and that the documents do not constitute the contract itself, but are only evidence of it. It seems to me that although there may have been such a verbal contract, and although money may have been paid under it, and so a writing would not be essential, yet if the terms of the contract are at the time, as here, reduced into writing and signed by the parties, and the writing contains all the terms of the contract, and those terms are such as would pass the property in the subject-matter of the contract, such a document is a transfer or assurance of personal chattels within the 7th section."

(*e*) **Powers of attorney, authorities or licences to take possession of personal chattels as security for any debt.**—Hence a bill of sale of future as well as of actual existing property is within the Act. *Holroyd* v. *Marshall*, 10 H. L. 227.

(*f*) **Any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred.**—This confirms the doctrine of *Ex parte Mackay*, L. R., 8 Ch. 642; *Ex parte Conning*, L. R., 16 Eq. 414; *Edwards* v. *Edwards*, L. R., 2 Ch. D. 291.

For the distinction between such agreements and letters of hypothecation in the ordinary course of business, which are within the exceptions of this section, see *Ex parte*

Conning, ubi sup.; Ex parte North Western Bank, L. R., 15 Eq. 69, and *infra*, p. 6.

It is a very delicate question whether the addition of these words alters the law applicable to such cases as that of *Brown* v. *Bateman*, L. R., 2 C. P. 272. By a building contract, which provided for advances being made by A., the landowner, to B., the builder, to be repaid before loans were granted, it was agreed (Art. 7), that all materials which should have been brought on the premises by B. for building purposes, should be considered as immediately attached and belonging to the premises, and that no part thereof should be removed without A.'s consent; and (Art. 8) that if B. should fail to proceed, &c. within the time limited, A. might enter and take possession of the premises, with all buildings and improvements thereon, and all bricks and other building materials thereon, for his and their own absolute use and benefit:—Held, that though Art. 8 might be a mere licence to seize, and therefore, perhaps, within the Bills of Sale Act, Art. 7 gave A. such an equitable interest in the materials as to disentitle the sheriff to seize them under an execution against B., and that notwithstanding the document was not registered as a bill of sale.

Another case which might seem to be affected by the addition of these words to the description of a bill of sale, is that of *Ex parte Watson*, L. R., 5 Ch. D. 35. There an agreement providing that a manufacturer should have a lien upon the bills of lading of certain goods, and each shipment of such goods on transit outwards, or in the hands of the consignees, or any other persons, and also upon the proceeds or produce purchased with the proceeds of each such shipment in the hands of the consignees or any other persons, or in the transit homewards, such lien to extend only to the particular shipment, was held not to be a bill of sale within the meaning of the Act, but merely to give a right connected with vendor's lien.

A case not altogether dissimilar was that of *Re Robertson*, 26 W. R. 733, where furniture was let to the debtor on an agreement that it should become his property on the payment of the purchase-money by certain instalments. And the Court of Appeal held that the agreement was not a bill of sale, the debtor not being in a position to give one, as no property in the goods passed to him until all the instalments were paid.

It must not, however, be assumed that either *Ex parte Watson* or *Re Robertson* would have been differently decided if they had followed instead of preceding the present Act.

But shall not include the following documents; that is to say, assignments for the benefit of the

creditors of the person making or giving the same (*g*), marriage settlements (*h*), transfers or assignments of any ship or vessel, or any share thereof (*i*), transfers of goods in the ordinary course of business of any trade or calling (*k*), bills of sale of goods in foreign parts or at sea (*l*), bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented (*m*):

(*g*) **Assignments for the benefit of the creditors of the person making or giving the same,**—*i. e.*, for the benefit of all the creditors of such person; though it is not necessary that the deed should appear on the face of it to be executed by all the creditors, Pollock, C. B., Martin and Channell, BB.; Bramwell, B. diss. *General Furnishing and Upholstery Company* v. *Venn*, 2 H. & C. 153.

An assignment by an executrix, who was also residuary legatee, of all the property passing by the testator's will to trustees upon trust to pay the testator's debts, was held to fall within this exception. *Wolverhampton Bank* v. *Marston*, 7 H. & N. 148.

(*h*) **Marriage settlements,**—*i. e.*, antenuptial settlements. Postnuptial settlements of chattels are within the Act, and must be registered. *Fowler* v. *Foster*, 28 L. J., N. S., Q. B. 210; *Ashton* v. *Blackshaw*, L. R., 9 Eq. 510.

(*i*) **Transfers or assignments of any ship or vessel, or any share thereof.**—A bill of sale is the instrument of transfer of ship property in use among all maritime nations. So far as this country is concerned, provisions are made for the registration of bills of sale of property in British ships at the port at which the ship itself is registered, and until registration an absolute power of disposition is recognized as still remaining in the transferor. 17 & 18 Vict. c. 104, ss. 57, 81; *Boyson* v. *Gibson*, 4 C. B. 121; *Campbell* v. *Thompson*, 2 Hare, 140: but see *Stapleton* v. *Hayman*, 2 H. & C. 918, where it was held that there being no laches on the part of the transferee, his right prevailed over that

of the creditors under the bankruptcy of the transferor which intervened between execution and registration. See also generally, Maclachlan's Merchant Shipping, pp. 35 *et seq.* A transfer or assignment of property in a foreign ship, though not within the registration clause of the Merchant Shipping Amendment Act, is nevertheless also within the above exception. *The Union Bank of London* v. *Lenanton*, L. R., 3 C. P. D. 243.

(*k*) **Transfers of goods in the ordinary course of business of any trade or calling.**—Vide note (*m*), *infra*.

(*l*) **Bills of sale of goods in foreign parts or at sea.**—Whether Scotland and Ireland be in "foreign parts" or not, yet having regard to these words and to s. 24, *infra*, a bill of sale of chattels in Scotland, given by one person in England to another person in England, does not require registration under this Act. *Coote* v. *Jecks*, L. R., 13 Eq. 597.

(*m*) **Any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or delivery, the possessor of such document to transfer or receive goods thereby represented.**—The similar words in sect. 7 of the old Act were held to except from the operation of the Act a letter of hypothecation by which a factor and warehouse-keeper pledged goods to a bank to secure a sum of money, no delivery of the warrants being made at the time, but a promise to deliver them the following morning being added at the foot of the letter. In giving judgment, Bacon, C.J., said, "There is in the 7th clause a plain and careful exposition of what may be called the mercantile transaction of advance and pledge; but, even if that were not so, the Bills of Sale Act relates to totally different transactions, creates different rights, imposes different duties; and it would be a perversion of the words, as it would be a total departure from the meaning, to say that such a transaction of advance and hypothecation amounted to a bill of sale, or that it had any analogy or relation to any such transaction." *Ex parte North Western Bank*, L. R., 15 Eq. 69.

In the subsequent case of *Ex parte Conning*, L. R., 16 Eq. 414, Bacon, C.J., distinguished *Ex parte North Western Bank*. In the case before him, traders, in consideration of goods being supplied to them by brokers on credit, signed a written document addressed to the brokers, by which they undertook to hold at the disposal of the brokers all their stock, &c.; and from time to time, whenever required by them so to do, to execute a valid and effectual transfer of the same to them, to the intent that out of the premises all claims and demands for the time being owing from the traders to the brokers might be paid and satisfied. The security was to be a continuing one. This the Chief Justice

held to be an agreement for a bill of sale, and requiring, therefore, registration under the principle laid down in *Ex parte Mackay*, L. R., 8 Ch. 642.

Personal chattels.

The expression "personal chattels" (*n*) shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures (*o*) and growing crops (*p*); but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed (*o*), nor growing crops when assigned together with any interest in the land on which they grow (*p*), nor shares or interests in the stock, funds or securities of any Government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which, by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale (*q*).

(*n*) Personal chattels to be within the Act must be in England or Wales. *Coote* v. *Jecks*, L. R., 13 Eq. 597; cf. *supra*, p. 6.

(*o*) **Fixtures.**—The rules applicable to the registration of bills of sale of trade machinery and other fixtures may be briefly summarized thus:— Fixtures.

(a.) All assignments of trade machinery, whether or not it be assigned together with some freehold or leasehold interest in the land or building to which it is affixed, must be registered; Rules as to fixtures under this Act.

(b.) All assignments of fixtures, other than trade machinery, if the same are not assigned together with some freehold or leasehold interest in the land or building to which they are affixed, must be registered;

(c.) Assignments of fixtures, other than trade machinery,

where the same are assigned together with some such freehold or leasehold interest as above in the land or building to which they are affixed, need not be registered.

And for the purpose of these rules—

(d.) Fixed motive powers, fixed power machinery, and steam, gas or water pipes, are fixtures other than trade machinery, *i. e.*, they fall under rules (b.) and (c.), and not under rule (a.); vide sect. 5, *infra*.

Moreover—

(e.) Fixtures are to be deemed to be assigned together with some such interest as above—

notwithstanding that they are assigned by separate words, and

notwithstanding that power is given to sever them from the land or building to which they are affixed,

if by the same instrument any such interest as above is also conveyed or assigned to the same person; vide sect. 7, *infra*.

The effect of these rules may be best seen by comparing them with the law on the same subject as it stood before the Act.

Previous rules as to fixtures.

The 7th section of the Bills of Sale Act, 1854, included among personal chattels, for the purposes of the Act, fixtures and other articles capable of complete transfer by delivery and contained no special provisions as to trade machinery. On this the cases raised the following distinctions:—

(1.) Is the assignment of the fixtures accompanied by a conveyance or assignment of the freehold or leasehold property on which they are, or is it not?

(2.) If it is so accompanied, is or is not the assignment of the fixtures by the same instrument, and by the same operative part of the same instrument, as the conveyance or assignment of such freehold or leasehold property?

(3.) If question 2 is answered affirmatively, is there or is there not a power to sever the fixtures for the purpose of obtaining the benefit of the assignment?

(4.) The question whether trade machinery was or was not a fixture was a question of fact to be decided in each case. Cf. per James, L. J., in *Ex parte Daglish*, L. R., 8 Ch. at p. 1080.

And it was held that—

(a.) An assignment of fixtures *per se* required registration.

(b.) An assignment of fixtures accompanying a conveyance, or an assignment of the property, whether freehold or leasehold, on which they were, but effected by a separate instrument or by a separate

operative part of the same instrument, required registration. *Waterfall* v. *Penistone*, 6 E. & B. 876; *Begbie* v. *Fenwick*, L. R., 8 Ch. 1075, n.; *Hawtry* v. *Butlin*, L. R., 8 Q. B. 290; *Ex parte Daglish*, L. R., 8 Ch. 1072;

(c.) An assignment of fixtures, though effected by the same operative part of the same instrument as effected the assignment or conveyance of the property on which they were, yet if it provided for a separate disposition of the fixtures, required registration. *Ex parte Daglish, ubi sup.; Ex parte Barclay*, L. R., 9 Ch. 576; *Ex parte Alexander, Re Eslick*, L. R., 4 Ch. D. 503; and cf. *Ex parte Tweedy, Re Trethowan*, L. R., 5 Ch. D. 559.

(d.) But an assignment of fixtures, whether trade machinery or not, which was effected by the same operative part of the same instrument as effected the assignment or conveyance of the property, whether freehold or leasehold, on which they were, and which did not provide for any separate disposition of the fixtures apart from that property, did not require registration. The conveyance or assignment of the freehold or leasehold property carried the fixtures attached to it, and even those which might become attached to it during the continuance of the security. Nay more, a mere deposit of the deeds relating to the property had the same effect. *Banbury* v. *White*, 2 H. & C. 300; *Mather* v. *Fraser*, 2 K. & J. 536; *Haley* v. *Hammersley*, 3 D. F. & J. 587; *Holland* v. *Hodgson*, L. R., 7 C. P. 328; *Meux* v. *Jacobs*, L. R., 7 H. L. 481; *Williams* v. *Evans*, 23 Beav. 239; *Irish Civil Service Building Society* v. *Mahoney*, I. R., 10 C. L. 363; *Boyd* v. *Shorrock*, L. R., 5 Eq. 72.

Growing crops.

(*p*) **Growing crops.**—The result of the provisions as to these may be summed up thus:—

Rules as to growing crops under this Act.

(a.) Growing crops when assigned together with any interest in any land in which they grow are not within the Act;

(b.) Growing crops when separately assigned or charged are within the Act; but

(c.) Growing crops are not to be deemed to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land on which they grow, without otherwise taking possession of or dealing with such land, if by the same instrument any freehold or leasehold interest in the land on which they grow is also conveyed or assigned to the same persons or person. *Vide* sect. 7, *infra*.

On the other hand, growing crops are apparently not

within the class of exceptions from the Act, which is described below as "any stock or produce upon any farm or lands which, by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale." *Brantom* v. *Griffits*, L. R., 1 C. P. D. 349.

Previous rules as to growing crops.

Previously to the Act growing crops were held by the English courts not to be within the Bills of Sale Act, 1854. *Brantom* v. *Griffits*, *ubi sup.*, and on appeal, L. R., 2 C. P. D. 212. By the Irish courts they were held to be within the corresponding Act. *Sheridan* v. *McCartney*, I. R., 11 C. L. 506, on which case see *Gough* v. *Everard*, 32 L. J., N. S. Exch. 210.

Fixtures.—Vide note (*o*), *supra*, p. 7.

Growing crops.—Vide note (*p*), *supra*, p. 9.

(*q*) **Any stock or produce upon any farm or lands which, by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale.**—By the repetition of these words, after the construction put upon them in *Brantom* v. *Griffits* (L. R., 1 C. P. D. 349), the legislature would seem to have adopted that construction. See *Ex parte Thorne*, L. R., 3 Ch. D. 458, per James, L. J. Accordingly, the stock or produce here referred to is limited to mean produce already severed from the land, and which might be delivered, although by the covenant or custom it ought not to be removed from the farm.

Apparent possession.

Personal chattels shall be deemed to be in the apparent possession of the person making or giving a bill of sale so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

"Prescribed" means prescribed by rules made under the provisions of this Act.

This is a verbal re-enactment of the similar provision in s. 7 of the Bills of Sale Act, 1854. The subject of apparent possession, as well as of possession generally, is treated below at pp. 17 *et seq.*

5. From and after the commencement of this Act, trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act. Application of Act to trade machinery.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop;

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam-engines, and the steam-boilers, donkey-engines, and other fixed appurtenances of the said motive-powers; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,

3rd. Exclusive of the pipes for steam, gas and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of Trade Machinery shall not be deemed to be personal chattels within the meaning of this Act.

Subaudi, when assigned together with a freehold or leasehold interest in the land or building to which they are affixed. See sect. 4, at p. 7.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade or for purposes of gain, in

or incidental to the following purposes, or any of them; that is to say,

(a.) In or incidental to the making of any article or part of an article; or,

(b.) In or incidental to the altering, repairing, ornamenting, finishing of any article; or,

(c.) In or incidental to the adapting for sale any article.

On this section see note (*o*), p. 7, *supra*.

Certain instruments giving powers of distress to be subject to this Act.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

This section considerably impairs the value of the attornment or distress clause commonly, and especially in the northern counties, introduced into mortgages of freehold and leasehold property, where the property is in hand, as an additional security for the punctual payment of the interest, and in some cases for the gradual reduction of the principal also. The validity of these clauses respectively

was, after some doubt, established and confirmed by a succession of cases, such as *West* v. *Fritche*, 3 Exch. 216; *Pinhorn* v. *Souster*, 8 Exch. 763; *Turner* v. *Barnes*, 2 B. & S. 435; *Jolly* v. *Arbuthnot*, 4 De G. & J. 224; and *Morton* v. *Woods*, L. R., 4 Q. B. 293: and the peculiar advantage which they commanded was, that they gave to the mortgagee, without his incurring the liability of taking possession, the same privileges against the mortgagor in possession as he would have had against the mortgagor's tenants if the property had not been in hand.

The privilege which the Bankruptcy Acts reserve to the landlord of a bankrupt's property, of distraining for one year's rent in arrear, gave additional value to these clauses, which no doubt were in effect made in some cases to operate so as to defeat the object of the Bills of Sale Act.

The new rule does nothing but reduce the operation of such clauses within their reasonable limits. As between the mortgagee and mortgagor, they will still give an additional security for the punctual payment of interest, and, if so expressly provided (*Hampson* v. *Fellows*, L. R., 6 Eq. 575), for the reduction of principal also. Nay, more, as against the execution creditor or trustee in bankruptcy of the mortgagor, they will stand good to the extent of a fair and reasonable rental if the mortgagee has first entered into possession, and then demised to the mortgagor; but in order to give the mortgagee, as against an execution creditor or trustee in bankruptcy, the landlord's privileges to any extent beyond the fair and reasonable rent, or even to that extent without his first entering into possession, the mortgage deed must have been registered as a bill of sale.

Fixtures or growing crops not to be deemed separately assigned where the land passes by the same instrument.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same person or persons.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

See the notes on Fixtures, page 7, *ante*, and on Growing Crops, page 9, *ante*.

Avoidance of unregistered bill of sale in certain cases.

8. Every bill of sale to which this Act applies shall be duly attested, and shall be registered under this Act within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given; otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels or any of them are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any Court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void, so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of

such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued, under or in the execution of which such bill has been made or given, as the case may be).

Conditions necessary to make a bill of sale good as against all the world.

It will be observed that in the first part of this section we have the directions which are to be followed in order to render a bill of sale, within the meaning of the Act, valid against all the world:

1. It must be duly attested. See sect. 10, p. 21, *infra*, for the mode of attestation.
2. It must be duly registered under the Act—see sect. 10, p. 21, *infra*, for the mode of registration—and that within seven days after the making or giving thereof. See sect. 22, p. 32, *infra*, for the case in which the seven days expire on a Sunday or other day on which the registrar's office is closed. See also sect. 11, *infra*, for renewal of registration.

The remainder of the section is devoted to two questions: 1st. The persons as against whom a non-registered bill of sale is fraudulent and void; and, 2nd. The extent to which as against those persons a non-registered bill of sale is fraudulent and void.

Persons by whom a non-registered bill of sale is voidable.

First, then, of the persons as against whom a non-registered bill of sale may be held fraudulent and void.

With regard to this, it will at once appear that the persons against whom a non-registered bill of sale is fraudulent and void are confined to two or three classes of persons.

These are—

(a.) Trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in the bill of sale, under the law relating to bankruptcy or liquidation;

(b.) Trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in the bill of sale, under any assignment for the benefit of the creditors of such person;

(c.) Sheriffs' officers and other persons seizing any chattels comprised in such bill of sale in the execution of any process of any court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made; and,

(d.) The person on whose behalf such process shall have been issued.

Moreover, the protection given to these classes of persons is unqualified—*e.g.* the fact that an execution creditor was, at the time when his debt was contracted, aware that his debtor had given a bill of sale of chattels, does not prevent him availing himself of the objection that it has not been registered. *Edwards* v. *Edwards*, L. R., 2 Ch. D. 291.

Persons as against whom non-registration is immaterial.

On the other hand, as against the giver of the bill of sale himself, and, indeed, as against every one who does not fall within some one of the above classes, the non-registration of a bill of sale is (subject to the proviso as to priorities contained in sect. 10, on which see p. 26, *infra*) absolutely immaterial. And so, in fact, it has, in cases under the old Act, been repeatedly stated by the Courts. See *Hills* v. *Shepherd*, 1 F. & F. 191; *Barker* v. *Aston*, *ib.* 192.

Administration of insolvent estate.

Winding-up of insolvent company.

Moreover, notwithstanding sect. 10 of the Judicature Act, 1875, which provides that, in the administration of an insolvent estate, or the winding up of an insolvent company, the rules of bankruptcy as to the respective rights of secured and unsecured creditors are to apply, it has been held that an unregistered bill of sale is not void on that account, as against the unsecured creditors of an insolvent estate (*Re Knott*, L. R., 7 Ch. D. 549, n. (1)); and it is presumed that neither would it be held void as against the liquidator of an insolvent company. See *Re Albion Steel and Wire Company*, L. R., 7 Ch. D. 547. There is an express decision to that effect before the Judicature Act. *Re Marine Mansions Company*, L. R., 4 Eq. 601.

The extent to which a non-registered bill may be fraudulent and void.

2nd. As to the extent to which a non-registered bill of sale is fraudulent and void against a person falling within some one of the above classes:

This is expressed by the act thus:—"So far as regards the property in or right to the possession of any chattels comprised in such bill of sale which at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days, are in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process has issued under or in the execution of which such bill has been made or given as the case may be."

So far as regards the property in or right to the possession of, &c., (that is to say)—not merely has the assignee under the bill of sale no property in the chattels as against any of the persons above mentioned, but he has not so much as the right of possession, such, for example, as ordinarily belongs to the person having actual possession, quite irrespective of any right of property, until some person with a better right claims it. On the other hand, registration is superfluous where property is taken out of the grantor's possession. *Minister* v. *Price*, 1 F. & F. 686.

Next observe the critical time :— Critical time.

(a.) As against the trustee in bankruptcy or liquidation, it is the filing of the petition : As against trustee in bankruptcy or liquidation.

This is a new provision in favour of the bill of sale holder; under the Act of 1854 the critical time in a similar case was the commencement of the bankruptcy or liquidation, or in other words the earliest act of bankruptcy to which the title of the trustee could relate. See *Ex parte Attwater*, L. R., 5 Ch. D. 27; and cf. *Fawcett* v. *Fearne*, 6 Q. B. 20; *Ex parte Jay*, L. R., 9 Ch. 697; *Ancona* v. *Rogers*, L. R., 1 Exch. D. 285.

(b.) As against the trustee or assignee of a creditor's deed, the critical time is that of the execution of the assignment : As against creditor's trustee or assignee.

By sect. 1 of the Act of 1854 the words were execution *by the debtor* of such assignment.

and

(c.) As against the Sheriff or the execution creditor, it is the time of executing the process. As against sheriff or execution creditor.

But in every case it must be after the expiration of the seven days after the making or giving of the bill of sale.

Within the seven days the title of the bill of sale holder will prevail, and that whether his bill of sale is simply unregistered (*Marples* v. *Hartley*, 30 L. J., N. S., Q. B. 92: *Piercy* v. *Humphreys*, 17 L. T., N. S. 463), or is registered imperfectly. *Banbury* v. *White*, 2 H. & C. 300; *Brignall* v. *Cohen*, 21 W. R. 25; *Ex parte Northern Investment and Discount Company*, 27 L. T., N. S. 520. The period of seven days.

As to the evasion of the act by a series of unregistered bills of sale, see sect. 9, *infra*, p. 20.

Finally, on this section, observe the words **possession or apparent possession.** Possession; apparent possession.

For the bill of sale is only voidable as to the chattels which are in the possession or apparent possession of the person making it, or of any person against whom the process issued under, or in the execution whereof such bill has been made or given, as the case may be.

What actual possession is needs no definition. Apparent possession is thus defined, sect. 4, *supra* :—Personal chattels are deemed to be in the apparent possession of the person making or giving a bill of sale, so long as they remain in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used or enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by, or given to, any other person. This clause is to be read as a whole, and as a whole it is qualified by the words "notwithstanding that formal possession thereof may have been taken by or given to any other person." In other words, actual possession taken of any chattels will take them out

Apparent possession.

of the apparent possession of the debtor, although they remain in or upon any house, mill, &c. occupied by him. *Gough* v. *Everard*, 2 H. & C. 1, 12; *Ex parte Lewis*, L. R., 6 Ch. 626, 629.

Next, property will not be deemed to be "occupied" by the debtor unless it is in fact occupied by him. *Smith* v. *Wall*, 18 L. T., N. S. 182; *Gough* v. *Everard*, *ubi supra*; *Davies* v. *Jones*, 10 W. R. 479. Mere liability to pay rates in respect of it is not enough. *Robinson* v. *Briggs*, L. R., 6 Exch. 1.

The most frequent cases under the similar sections of previous acts have naturally been those in which an attempt has been made by the bill of sale holder to take the chattels out of the possession of the debtor at or about the critical time; and the questions which arise have been these: Was the attempt successful? Was possession taken? And, secondly, If possession was taken, was the possession actual and *bonâ fide* possession, or was it formal possession only?

For it is well established that a mere attempt to obtain possession of the goods, and which has not been in fact successful, is not enough to take them out of the apparent possession of the debtor. Such words as "with the consent of the true owner" find no place in the Bills of Sale Act, and the rules as to "order and disposition" under the Bankruptcy Acts do not apply to apparent possession. *Ex parte Jay*, L. R., 9 Ch. 697; *Ex parte Lewis*, L. R., 6 Ch. 626, 631.

So, in *Ex parte Warren*, L. R., 10 Ch. 222, where the subject-matter of the bill of sale consisted of brewery plant, and at the time the grantee took possession a number of casks comprised therein were in the hands of customers, and remained so at the commencement of the debtor's liquidation, the bill of sale holder was held entitled to such plant only as he had taken corporal possession of before the filing of the liquidation petition.

A fortiori, where the bill of sale holder has merely obtained an order by consent for the appointment of a receiver, it is not enough; *Edwards* v. *Edwards*, L. R., 2 Ch. D. 291; *secus*, where a receiver is appointed and has taken possession. *Taylor* v. *Eckersley*, L. R., 5 Ch. D. 741.

Again, in the case of goods which are not on any property occupied by the debtor, but are used or enjoyed by him in some other place; as, for example, where they have been bailed with a bailee to hold on account of the debtor, they will be held to be in the debtor's possession, notwithstanding that the bill of sale holder may have been entitled to and have demanded possession, unless possession of them has been actually given him, or the bailee has agreed to hold them on his account. *Ancona* v. *Rogers*, L. R., 1 Ex. D. 285. And cf. *Ex parte Mutton*, L. R., 14

Eq. 178, where the goods were in the possession of the sheriff under an execution. Apparent possession.

On the other hand, the doctrine of constructive possession is not wholly excluded. Thus, possession may no doubt be taken of a part of the chattels in the name of the whole; but that the doctrine may apply, the chattels of which constructive possession is taken, must be in their nature and circumstances just as takeable, so to speak, as those of which the actual possession is taken. This condition distinguishes *Ex parte Warren*, *ubi supra*. Again, possession may be taken by symbol, as, *e.g.*, by the key of the place in which the chattels are. *Gough* v. *Everard*, 2 H. & C. 1. Nay, in one case where the chattels were locked up, and the key could not be obtained, the fact that the bill of sale holder had done all in his power to obtain actual possession, and by his vigilant guard over the place had rendered it impossible for any one else to obtain it either, this was held sufficient. *Furber* v. *Finlayson*, 24 W. R. 370.

The doctrine of constructive possession, however, will only apply when such actual possession as is taken is lawful. A person who takes unlawful possession withdraws from the operation of the Act just so much as he takes actual and bodily possession of and no more. *Ex parte Fletcher*, L. R., 5 Ch. D. 809; see also *Ex parte Redfern*, 19 W. R. 1058.

Whether the possession taken be actual or constructive it must be *bonâ fide* possession; merely formal possession is ineffectual. At the same time it is not easy to define what distinguishes *bonâ fide* from merely formal possession. It is a matter of inference from all the circumstances of the case taken in connection with one another; and what is a want of *bona fides* in one case may well be the reverse in a second. To select the critical facts from the decided cases could not therefore be otherwise than misleading; they must be taken in connection with their surroundings. The following passage from the judgment of Mellish, L. J., in *Ex parte Jay*, L. R., 9 Ch. 697, will sufficiently illustrate the principle:—

"The distinction (between real and formal possession) is that if a broker is simply put in and remains in possession, so as to prevent the removal of the furniture, but allowing everything to go on just as it did before, permitting everything to be used by the debtor and his family, then the goods still remain in the apparent possession of the debtor. There must be something done which takes them plainly out of the apparent possession of the debtor in the eyes of everybody who sees them."

And cf. *Gough* v. *Everard*, 2 H. & C. 1; *Smith* v. *Wall*, 18 L. T., N. S. 182; *Ex parte Lewis*, L. R., 6 Ch. 626; *Ex parte Hooman*, L. R., 10 Eq. 63; *Davies* v. *Jones*, 10 W. R. 779.

Avoidance of certain duplicate bills of sale.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale and not for the purpose of evading this Act.

Successive bills of sale; old law.

As against execution creditor.

As against trustee in bankruptcy.

Under the law as it stood prior to this Act, the evasion of the Bills of Sale Act, by a series of unregistered bills of sale, was judged differently according as it was impeached by an execution creditor or a trustee in bankruptcy. As against the execution creditor, the last bill of sale, if not void for other reasons, was not avoided as being the last of a series of bills of sale. *Hollingsworth* v. *White*, 6 L. T., N. S. 604; *Marples* v. *Hartley*, 3 E. & E. 610; *Smale* v. *Burr*, L. R., 8 C. P. 65; *Ramsden* v. *Lupton*, L. R., 9 Q. B. 17; *Ex parte Harris*, L. R., 8 Ch. 48. As against the trustee in bankruptcy, on the other hand, such a last bill of sale was held void, as a fraud not indeed upon the Bills of Sale Act, but upon the Bankruptcy Act. *Stansfeld* v. *Cubitt*, 2 De G. & J. 222; and *Ex parte Cohen*, L. R., 7 Ch. 20; *Ex parte Stevens*, L. R., 20 Eq. 786; *Ex parte Furber*, L. R., 6 Ch. D. 181; see also *Re Jackson*, L. R., 4 Ch. D. 682, which is perhaps reconcileable with the other authorities.

Under this present section the subsequent bill of sale, if given for the same debt, is absolutely void, not merely against the trustee in bankruptcy and the execution creditor, but as against all the world, and therefore, as against, among other persons, a subsequent incumbrancer, though his security be unregistered, and even the mortgagor himself.

When second bill

The exception permitting the taking of a second bill of

sale in certain cases is in terms confined to instances of material error in the prior bill itself, but would possibly be extended, if necessary, to instances of material error in the affidavit accompanying the registration or otherwise relating thereto. Compare *Re O'Brien*, 10 Ir. C. L., App. xxxiii. But quære whether the right course in such a case would not be to apply under sect. 14 to rectify the register.

of sale permitted.

10. A bill of sale shall be attested and registered under this Act in the following manner:

Mode of registering bill of sale.

Under this Act,—*Ergo*, attestation is not essential to the validity of a bill of sale, except for the purposes of the Act. *Deffell* v. *Miles*, 15 L. T., N. S. 293.

(1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor.

This is an entirely new provision. The following form of attestation is suggested as conformable to the Act:

"Signed [sealed and delivered] by the above-named A. B., in the presence of me C. D. of E., in the county of F., a solicitor of the High Court, by whom the effect of the above written bill of sale was, before its execution, explained to the said A. B. (Signed) C. D."

(2.) Such bill, with every schedule (*a*) or inventory thereto annexed or therein referred to, and also a true copy (*b*) of such bill, and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with (*c*) an affidavit (*d*) of the time of such bill of sale being made or given (*e*), and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (*f*), (or in case the same is made or given by any person under or in the execution of

any process, then a description of the residence and occupation of the person against whom such process issued (*f*)), and of every attesting witness (*f*) (*g*) to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar (*h*) within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed (*i*).

(*a*) **With every schedule.**—Where a loose and scattered schedule alone existed at the date of the execution, it was held that a true copy of it, which had been substituted for the original, must be registered. *Green* v. *Attenborough*, 34 L. J., N. S., Exch. 88.

(*b*) **A true copy.**—Merely clerical errors which cannot mislead will not invalidate registration, *e. g.*, "£1,000" in one place for "£100," *Elliot* v. *Freeman*, 7 L. T., N. S. 715; "Gardnor" for "Gardner," the name of the grantee, *Gardnor* v. *Shaw*, 19 W. R. 753.

(*c*) **Together with,**—*i. e.*, simultaneously or along with. *Grindell* v. *Brendon*, 6 C. B., N. S. 698.

(*d*) **An affidavit.** This may be expressed to be to the best of the belief of the deponent; at any rate so far as it relates to the residence and occupation of the maker of the bill of sale. *Roe* v. *Bradshaw*, L. R., 1 Exch. 106.

(*e*) **Time of such bill of sale being made.**—A patent clerical error in the affidavit in this respect will not invalidate the registration. *Lamb* v. *Bruce*, 24 W. R. 645.

(*f*) **And a description of the residence and occupation** of the giver of the bill of sale . . . and of every attesting witness, *i. e.*, at the time of giving the bill of sale, not at the time of filing the affidavit. *London and Westminster Loan Company* v. *Chace*, 12 C. B., N. S. 730; and cf. *Hatton* v. *English*, 7 Ell. & B. 94.

Residence.

Residence.—The description of the place of business may sometimes be accepted as a sufficient description of the residence; *Ablett* v. *Bartham*, 5 Ell. & B. 1019; *Blackwell* v. *England*, 8 Ell. & B. 541; *Attenborough* v. *Thompson*, 2 H. & N. 559; and a description of the private residence, without mention of the place of business also, was, in the case of the lessee of a theatre, held insufficient. *Hewer* v. *Cox*, 30 L. J., Q. B. 73; cf. *Ex parte Hooman*, L. R.

10 Eq. 63. It will in practice be safer to express both the private and business address. The minuteness of the description of the residence will vary with the character of the place and person. In some cases the name of the parish or town will be sufficient: thus, A. B., of Hanley, accountant, was held sufficient, it being proved that letters addressed to that person at Hanley, and without any further direction, were in the habit of reaching him. *Briggs* v. *Boss*, L. R., 3 Q. B. 268. In another case it was said that the description "of Cork," might possibly be sufficient in the case of one of the principal merchants of the city, while it would not be so in the case of persons of inferior position. *Re Harris*, 10 Ir. Ch. Rep. 100. In some cases the street, and even the number of the house, would be proper and necessary; per Blackburn, J., in *Briggs* v. *Boss*, ubi supra; and see *Murray* v. *McKenzie*, 23 W. R. 595, which was decided against the bill of sale holder on the ground of error in the number of the house. A patent error, however, such as can mislead no one, will not be fatal, *e.g.*, where Blackfriars was described as in Middlesex instead of in London. *Hewer* v. *Cox*, 30 L. J., Q. B. 73; cf. *Bellamy* v. *Saul*, 7 L. T., N. S. 269; *Blount* v. *Harris*, 47 L. J., N. S., Q. B. 596. It seems, moreover, that though the description is to be not in the bill of sale, but in the affidavit (*Allen* v. *Thompson*, 1 H. & N. 15; *Hatton* v. *English*, 7 E. & B. 94), the bill of sale may be referred to in order to explain and supplement an imperfect description in the affidavit. *Jones* v. *Harris*, L. R., 7 Q. B. 157; *Ex parte Mackenzie*, 42 L. J., Bkcy. 25. So, too, if the affidavit refers to the description in the bill of sale, and states it to be correct, that will be enough. *Picard* v. *Bretz*, 5 H. & N. 9; *Foulger* v. *Taylor*, 5 H. & N. 202; *Brodrick* v. *Scale*, L. R., 6 C. P. 98. Residence.

Occupation is the principal business of one's life, the business which a man follows to procure a living or obtain wealth; per Martin, B., *Tuton* v. *Sanoner*, 3 H. & N. 280; cf. *Luckin* v. *Hamlyn*, 21 L. T., N. S. 366. Occupation.

A gentleman, on the other hand, is essentially a person of no occupation: hence, a solicitor's clerk (*Brodrick* v. *Scale*, L. R., 6 C. P. 98); a clerk in the audit office (*Allen* v. *Thompson*, 1 H. & N. 15); a late managing clerk acting for the time being as a paid accountant (*Beales* v. *Tennant*, 29 L. J., N. S., Q. B. 188); a buyer of silk for a mercantile firm (*Adams* v. *Graham*, 33 L. J., Q. B. 71), are not properly described as gentlemen.

But a person who having had an occupation has ceased to exercise it (*Bath* v. *Sutton*, 27 L. J., Exch. 388), or who only exercises it temporarily, and not as the principal business of his life (*Smith* v. *Cheese*, L. R., 1 C. P. D. 60), is not improperly described as a gentleman, though he may

Occupation. be described as of no occupation (*Trousdale* v. *Sheppard*, 14 Ir. C. L. 370; and cf. *Dryden* v. *Hope*, 9 W. R. 18).

Esquire is another term which is liable to be wrongly used. It has been held that neither a merchant (*Re O'Connor*, 27 L. T. 27), nor a professional actor or manager of a theatre (*Ex parte Hooman*, L. R., 10 Eq. 63), is an esquire.

"Clerk" is apparently a good description without specifying the business of the principal. *Lamb* v. *Bruce*, 24 W. R. 645.

But a person who is merely the clerk or servant of one having a given occupation, cannot rightly describe himself as being of that occupation. An accountant's clerk, *e.g.* is not an accountant, and so for the rest (*Larchin* v. *The North Western Deposit Bank*, L. R., 8 Exch. 80; S. C., L. R., 10 Exch. 64); but a person who, although acting as the clerk of another, is yet allowed to carry on a similar business in the office for himself, and who holds to some extent an independent position, may describe himself as of that occupation. *Briggs* v. *Boss*, L. R., 3 Q. B. 268.

"Government clerk" is a sufficient description of a clerk in the admiralty. *Grant* v. *Shaw*, L. R., 7 Q. B. 700.

Where a person has more than one occupation it is enough that the principal occupation should be stated, *semble*. *Ex parte National Deposit Bank*, 26 W. R. 624; but see S. C., 26 W. R. 375.

Though the same general rules apply for the most part to the description of the residence and occupation of the grantor and attesting witness indifferently, somewhat greater accuracy is insisted on in regard to the grantor than in regard to the attesting witness, and it might be unsafe to extend the cases in which the affidavit has been held sufficient, because the description of the attesting witness, though not expressly stated, might be reasonably inferred (*Roublet* v. *Boutill*, Ell. & B. 850); or again, because the description would readily enable a person to find out who the witness was, although not quite accurate in detail (*Briggs* v. *Boss*, L. R., 3 Q. B. 268; *Blount* v. *Harris*, 47 L. J., N. S., Q. B. 596); or finally, because, though no occupation was stated, the witness had in fact no occupation (*Bath* v. *Sutton; Trousdale* v. *Sheppard, ubi sup.*), to cover similar defects in regard to the grantor himself.

If there is more than one grantor the affidavit should give the description of both, though the goods are in the possession of one only. *Hooper* v. *Parmenter*, 10 W. R. 648.

It is not necessary that a son who bears the same name as his father should be described as "the younger." *Foulger* v. *Taylor*, 1 L. T., N. S. 57.

(*f*) **Every attesting witness.**—Though the bill of sale need be attested by the solicitor only, yet if it is attested by any other person or persons also his or their descriptions

must be included in the affidavit. *Pickard* v. *Marriage*, L. R., 1 Exch. D. 364.

The necessity for strictly accurate description does not extend to the description of the grantee. *Gardnor* v. *Shaw*, 19 W. R. 753.

(*g*) **Shall be filed with the registrar.**—The duties of the registrar are ministerial only, and it is not his duty to inquire whether the act has been complied with. *Needham* v. *Johnson*, 15 W. R. 346.

He is, however, required to see that the original is properly stamped (33 & 34 Vict. c. 97, sect. 57), though neglect on his part will not prevent the bill of sale being given in evidence on payment of the duty and penalty. *Bellamy* v. *Saul*, 4 B. & S. 265.

(*h*) **Warrants of attorney to confess judgments for the payment of money**, or true copies thereof if given in any other court than the Queen's Bench, together with an affidavit of the time of the execution thereof, must be filed within twenty-one days after execution with the Clerk of Docquets in the Court of Queen's Bench (now the Queen's Bench Division) and unless filed within that period, or unless judgment shall have been signed, or execution issued on such judgment within the same period, they will be void against the grantor on bankruptcy of the debtor. 3 Geo. 4, c. 39; 6 & 7 Vict. c. 36.

(3.) If the bill of sale is made or given subject to any defeasance or condition (*i*), or declaration of trust (*k*) not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith, and as part thereof, otherwise the registration shall be void.

This provision is practically identical with sect. 2 of the Bills of Sale Act, 1854.

(*i*) **Defeasance, condition.**—A parol agreement that certain money secured by a bill of sale and payable thereunder in one sum should be paid by instalments, has been held to be a defeasance, the non-registration of which invalidated the registration of the bill of sale. *Ex parte Southam*, L. R., 17 Eq. 578, *sed quære*.

A memorandum that a sum of 30*l.*, part of the consideration money expressed to be paid, but which never really changed hands, should nevertheless be paid in full, although the money actually advanced might be duly repaid, was held not to be a condition or defeasance within sect. 2. *Ex parte Collins*, L. R., 10 Ch. 367.

(*k*) **Declaration.**—The declaration here mentioned is a declaration of trust as between the grantee and grantor. That the grantee is a trustee for some third person is immaterial. *Robinson* v. *Collingwood*, 34 L. J., N. S., C. P. 18.

(4.) In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

This provision, introduced for the first time in the present Act, has excited some discussion. It is one more instance in which the Act purports to provide for the security of persons other than those who, as we have seen on p. 15, are the peculiar objects of its protection. Hitherto questions of priority in connection with the registration of bills of sale have arisen only where, but for the registration of one out of several bills of sale, the title of the trustee in bankruptcy, or execution creditor, would have been indisputable. And in these cases it has been held that the registered bill of sale holder secures his own interest, *i. e.* the trustee or creditor cannot set up a prior unregistered bill of sale against him (*Edwards* v. *English*, 7 E. & B. 564; *Re Barrand*, L. R., 3 Ch. D. 324: affirmed, L. R., 4 Ch. D. 23); but that he secures nothing more than his own interest, the rights of other incumbrancers on the same property whose bills of sale are unregistered yielding to the interests of the trustee or creditor. *Richards* v. *James*, L. R., 2 Q. B. 285; *Begbie* v. *Fenwick*, 19 W. R. 402; *Nicholson* v. *Cooper*, 3 H. & N. 384. It seems to have been assumed that, in the absence of a bankruptcy or execution, registration gave no priority over a prior unregistered bill of sale.

Moreover, hitherto, as between two bills of sale, both of which were registered, priority of date and not priority of registration, gave priority of title. *Ex parte Allen*, L. R., 11 Eq. 209.

Under the present provision, on the other hand, priority of registration is to prevail, and that, although both the documents have been registered within the statutory period. For the security of a mortgagee thereof, it will be necessary to search the register up to the very moment of

completing the transaction, and the money must, as frequently in the case of a mortgage of shipping property, in regard to which a similar rule prevails, actually change hands in the registrar's office.

(5.) A transfer or assignment of a registered bill of sale need not be registered.

Neither will it necessitate a renewal of registration. Sect. 11, *infra*, *q. v.*, and note thereto.

Renewal of registration.

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years; and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale, and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

Although a transfer or assignment of a bill of sale does not require registration itself, nor necessitate a renewal of the registration of the bill of sale, a transferee is under the same obligation to renew the registration quinquennially as is the original grantee (*Karet* v. *Kosher Meat Association*, L. R., 2 Q. B. D. 361); and, therefore, in the case of a bill of sale executed before the Bills of Sale Act, 1854, is not bound to register or renew at all. *Re Shaw*, 25 W. R.

686. It does not seem that the words above, "whether before or after the commencement of this Act," make any difference.

As to the form of renewal of bills of sale executed before the commencement of the Act, see s. 23, p. 32, *infra*.

Form of register.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the Second Schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said Schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal, the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions cor-

responding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

The registrar.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.

36 & 37 Vict. c. 66. 38 & 39 Vict. c. 77.

The Office of Registration is situate at the top of the Temple, opposite the Crown Office, King's Bench Walk.

Rectification of register.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

Previously the permitting of such amendments was in the discretion of the registrar. See *Hollingsworth* v. *White*, 10 W. R. 619; *Elliott* v. *Freeman*, 7 L. T., N. S. 715.

Entry of satisfaction.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

Copies may be taken, &c.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice; and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons be admitted as *primâ facie* evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp.

Independently of this Act a certified copy of the affidavit is admissible under 14 & 15 Vict. c. 99, s. 14, and with a certified copy of the bill of sale has been held good evidence of registration (*Grindell* v. *Brendon*, 6 C. B., N. S. 698); but a bill of sale, with the certificate of filing upon it, is not sufficient evidence of the proper affidavit having been also filed. *Mason* v. *Wood*, L. R., 1 C. P. D. 63. Nor is the certificate of filing, unless accompanied by an authenticated copy of the bill of sale, sufficient evidence of a true copy of the bill of sale having been filed. *Halkett* v. *Emmott*, 47 L. J., Q. B. D. 436.

Affidavits.

17. Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

Previously a similar offence constituted a misdemeanor only. *Reg.* v. *Hodgkiss*, 21 L. T., N. S. 564.

Fees.

18. There shall be paid and received in common law stamps the following fees, viz.:—

On filing a bill of sale	2*s.*
On filing the affidavit of execution of a bill of sale.	2*s.*
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing)	5*s.*

Collection of fees under 38 & 39 Vict. c. 77, s. 26.

19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Order and disposition.

20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act, shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

32 & 33 Vict. c. 71.

This provision affords an additional inducement to the grantor to insist on the registration of the bill of sale. It sweeps away the whole law of *Stansfeld* v. *Cubitt*, 2 De G.

& J. 222; *Badger* v. *Shaw*, 29 L. J., Q. B. 73; *Begbie* v. *Fenwick*, 19 W. R. 402; *Ex parte Harding*, L. R., 15 Eq. 223. The old rule was not established without some doubts: see *Ashton* v. *Blackshaw*, L. R., 9 Eq. 510; *Ex parte Homan*, L. R., 12 Eq. 598. See also p. xxv, *supra*.

A registered bill of sale holder is, however, not entitled to forcibly remove chattels—however good his title to them—out of the possession of a receiver or other officer appointed to take charge of them by a competent court, but must make a substantial application to the court *pro interesse suo*. *Ex parte Cochrane*, 23 W. R. 726.

Rules.

21. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

36 & 37 Vict. c. 66.
38 & 39 Vict. c. 77.

Time for registration.

22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Repeal of Acts

23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction (*a*) and with respect to renewal of registration (*b*)) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force. Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made

17 & 18 Vict. c. 36.
29 & 30 Vict. c. 96.

under this Act in the same manner as the renewal of a registration made under this Act.

(*a*) Sect. 7, p. 13, *supra*.
(*b*) Sect. 11, p. 27, *supra*.

24. This Act shall not extend to Scotland or to Ireland. Extent.

SCHEDULES.

SCHEDULE A. [Section 11.]

I [*A. B.*], of , do swear that a bill of sale, bearing date the day of , 18 [*insert the date of the bill*], and made between [*insert the names and descriptions of the parties in the original bill of sale*], and which said bill of sale [*or*, and a copy of which said bill of sale, *as the case may be*] was registered on the day of , 18 [*insert date of registration*] is still a subsisting security.

Sworn, &c.

SCHEDULE B. [Section 12.]

Satisfaction entered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of Instrument.	Date.	Date of Registration.	Date of Registration of Affidavit of Renewal.
		Name.	Residence.	Occupation.					

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